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August 24, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

Re: Bay State Gas Company, D.T.E. 06-7

Dear Ms. Cottrell:

Enclosed please find Bay State Gas Company's response to the Attorney General's Motion for Reconsideration. If you have any questions, please call me or Patricia M. French at 508-836-7394.

Very truly yours,

Robert L. Dewees, Jr.

RLD/tlm  
Enclosure

cc: Jessie S. Reyes, Hearing Officer  
Andreas Thanos, Assistant Director, Gas Division  
Ken Dell Orto, Analyst, Gas Division  
Jamie M. Tosches, Assistant Attorney General

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

	)	
Petition of Bay State Gas Company	)	
for approval of an agreement between	)	
Bay State Gas Company and	)	D.T.E. 06-7
Northeast Energy Associates governing	)	
the acquisition of incremental capacity	)	
and supply.	)	
	)	

**RESPONSE OF BAY STATE GAS COMPANY TO THE  
ATTORNEY GENERAL’S MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

On August 18, 2006, the Attorney General filed a Motion for Reconsideration (“Motion” or “AG Motion”) of those portions of the Department of Telecommunications and Energy (the “Department”) order in this proceeding (“Order”) that rely on a forecast and supply plan that the Attorney General claims is out of date. In support of his Motion, the Attorney General argues that Bay State Gas Company (“Bay State” or the “Company”) was required by M.G.L. c. 164, § 69I to file a forecast and supply plan with the Department on or before November 15, 2004 rather than in the fourth quarter of 2006 as the Department has ordered. AG Motion, pp. 1, 3; Order, p. 2, fn. 1. Instead, the Attorney General requests that the Department reconsider the Order and require the Company to file an updated forecast and supply plan “immediately.” AG Motion, p. 4. The Attorney General claims that M.G.L. c. 164, § 69I requires a gas company to file a plan every two years, and that it is inconsistent with the statute to require Bay State to file its next plan in the fourth quarter of 2006, which is two years after the Department’s final

order approving Bay State's most recent long-range resource plan in D.T.E. 02-75-A (October 22, 2004). Id.

This Motion is similar to the Motion for Reconsideration filed by the Attorney General on August 3, 2006 in D.T.E. 06-42.

The Motion should be denied.

**II. THE MOTION SHOULD BE DENIED BECAUSE IT DOES NOT PRESENT SUFFICIENT GROUNDS FOR RECONSIDERATION OF THE DEPARTMENT'S ORDER.**

The Department may grant a motion for reconsideration if its treatment of an issue was the result of mistake or inadvertence or if extraordinary circumstances warrant a fresh look at the record. Such a motion should present previously unknown or undisclosed facts. A motion for reconsideration should not reargue issues considered and decided in the main case. AG Motion, pp. 1-2. However, this standard is not met by the Attorney General's Motion.

The arguments in the Motion were raised by the Attorney General during the proceeding and were considered and rejected by the Department. The Department explained that it has interpreted the two-year long-range resource plan filing period as beginning with the final order in the most recent prior plan proceeding. Order, D.T.E. 06-7, p. 2, fn. 1. The Department also indicated that the findings in its Order are not solely dependent on Bay State's most recently approved forecast and supply plan but are based on updated and supplemental information on the Company's forecasts and supply needs submitted in this proceeding. Order, p. 11.

The Department's long-standing rules require gas companies to file long-range resource plans within two years from the date of the Department's final order on a company's prior long-range resource plan. For example, KeySpan Energy Delivery New

England (“KeySpan”) filed a long-range plan on November 30, 2001. The Department issued its order on January 30, 2003 directing KeySpan to file its next plan approximately two years after the order, by March 1, 2005. KeySpan Energy Delivery New England, D.T.E. 01-105 (2003). Fitchburg Gas and Electric Light Company (“FG&E”) submitted its long-range plan on May 9, 2003, and the Department’s order on August 13, 2004 directed FG&E to file its next plan approximately two years thereafter, or by June 30, 2006. Fitchburg Gas and Electric Light Company, D.T.E. 03-52 (2004). Berkshire Gas Company (“Berkshire”) filed its long-range plan with the Department on March 15, 2002, and in its February 5, 2003 order, the Department directed Berkshire to file its next long-range resource plan by January 31, 2005, approximately two years after the order. Berkshire Gas Company, D.T.E. 02-17 (2003). Similarly, Blackstone Gas Company (“Blackstone”) filed a plan on October 25, 2000, and in an order dated May 4, 2001, the Department directed Blackstone to file its next long-range plan with the Department by May 1, 2003, two years later. Blackstone Gas Company, D.T.E. 00-81 (2001).

As noted above, the Department determined that the age of the Company’s last approved forecast and supply plan did not affect the reliability of forecast and supply information in the record and relied on by the Department in this proceeding. The Department noted that it expects a company seeking approval under M.G.L. c. 164, § 94A for additional supply and capacity resources to provide up-to-date forecasts and supply plans in the approval proceeding. This is precisely the procedure followed by Bay State in this proceeding. Order, pp. 5, 11. As a result, the Department did not rely on a forecast that is outdated.

It is clear that there was no mistake or inadvertence on the Department’s part, because the Department considered the same arguments made by the Attorney General

with respect to the timing of forecast and supply plan filings and rejected those arguments in a recent order. Bay State Gas Company, D.T.E. 06-42 (July 14, 2006), p. 9.

No evidence is presented in the Motion that demonstrates Department mistake or inadvertence or any extraordinary circumstance that would make reconsideration appropriate. Further, the Attorney General has presented no previously unknown or undisclosed facts that would impact the Department's ruling in D.T.E. 06-42.

### **III. THE DEPARTMENT'S RULES ON THE TIMING OF GAS RESOURCE PLAN FILINGS ARE REASONABLE AND CONSISTENT WITH ITS AUTHORITY TO ESTABLISH RULES UNDER CHAPTER 164 OF THE GENERAL LAWS.**

The Department's rules for long-range resource plan filings are reasonable and consistent with Chapter 164. Long-range forecast and supply plans filed by gas companies pursuant to M.G.L. c. 164, § 69I contain detailed information about the reliability, integrity and cost of gas supplies for the company filing the plan. Because of the complexity of these plans, the Department's review necessarily takes a number of months. The procedure proposed by the Attorney General, where a company would file its plan every two years regardless of, and without having the benefit of, the Department's review and findings on the prior plan, is impractical and would reduce the benefits of the Department's review that occurs with the current plan filing procedures. The Attorney General's proposal would result in a pancaking of plan filings without gas companies having the benefit of the Department's analysis, or an opportunity to review and modify their resource plans based on such analysis. Adopting the Attorney General's proposal would also increase the cost and administrative burden for the Department. In contrast, the current procedure allows the Department time to review a company's

resource plan, and then allows a company time to respond to the Department's order in its next plan filing.

The Department's filing procedure is also consistent with an orderly and efficient review of gas company long-range resource plans. The General Court recognized that some flexibility might be required with respect to review of such plans and permitted the Department to exempt gas and electric companies from the provisions of M.G.L. c. 164, § 69I, after notice and hearing, if an alternative process is in the public interest. M.G.L. c. 164, § 69I. The Department directives requiring the filing of long-range resource plans two years after a final order in the prior long-range plan proceeding are such an alternative. Those directives are issued after hearings are held on a plan where issues with respect to the contents of, and the appropriate time for, the next filing are considered. Furthermore, the Department has broad powers to establish rules consistent with M.G.L. c. 164. Cambridge Electric Light Company v. Department of Public Utilities, 363 Mass. 474, 494 (1973). In addition, the Department has considerable discretion in interpreting a statute it is charged with enforcing. Consolidated Cigar Corporation v. Department of Public Health, 372 Mass. 844, 850 (1977).

There is no requirement, as alleged by the Attorney General, that the Department "certify the supplemental forecasts as long range forecasts". AG Motion, p. 3. Rather, the Department relied in this proceeding on updated forecast and supply information submitted by Bay State as the Company is required to do in proceedings conducted pursuant to M.G.L. c. 164, § 94A.

**IV. THE DEPARTMENT, FOR PRACTICAL PURPOSES, IS UNABLE TO GRANT THE RELIEF THE ATTORNEY GENERAL SEEKS.**

In his Motion, the Attorney General requests that the Department order Bay State to file its next forecast and supply plan "immediately." However, Bay State's long-range resource plan filing requires considerable time and effort to prepare. Bay State would be unable to file a plan "immediately" or before the commencement of the fourth quarter of 2006.

**V. CONCLUSION**

For the above reasons, Bay State requests that the Department deny the Attorney General's Motion for Reconsideration.

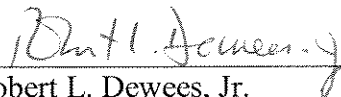
Respectfully submitted,

BAY STATE GAS COMPANY

By its Attorneys,



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August 24, 2006

## **CERTIFICATE OF SERVICE**

I certify that I served today a copy of the attached Response of Bay State Gas Company to Attorney General's Motion for Reconsideration by hand delivery, first class mail, postage prepaid or electronically on the Department of Telecommunications and Energy and all parties on the service list on file with the Secretary of the Department of Telecommunications and Energy for this proceeding.

Dated at Boston, Massachusetts this 24<sup>th</sup> day of August, 2006.

Robert L. Jennings